

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN WASHINGTON REGION
STATE OF WASHINGTON

FUTUREWISE,

Petitioner,

v.

PACIFIC COUNTY,

Respondent,

and,

CITY OF LONG BEACH,

Intervenor.

Case No. 10-2-0021

COMPLIANCE ORDER

Pacific County filed a Compliance Report/Statement of Actions Taken to Comply on June 26, 2012. Futurewise filed a response on July 6, 2012. The Board held a telephonic Compliance Hearing on August 7, 2012. The County was represented by David J. Burke. Tim Trohimovich appeared on behalf of Futurewise. Board Members present were William Roehl and Nina Carter, with Mr. Roehl presiding.

I. BURDEN OF PROOF

Following a finding of noncompliance, the jurisdiction is given a period of time to adopt legislation to achieve compliance.¹ After the period for compliance has expired, the Board is required to hold a hearing to determine whether the local jurisdiction has achieved compliance.² For purposes of Board review of the comprehensive plans and development regulations adopted by local governments in response to a noncompliance finding, the

¹ RCW 36.70A.300(3)(b)

² RCW 36.70A.330(1) and (2)

1 presumption of validity applies and the burden is on the challenger to establish the new
2 adoption is clearly erroneous.³

3
4 In order to find Pacific County's action clearly erroneous, the Board must be "left with the
5 firm and definite conviction that a mistake has been made."⁴ Within the framework of state
6 goals and requirements, the Board must grant deference to local governments in how they
7 plan for growth:

8 The legislature intends that the board applies a more deferential standard of
9 review to actions of counties and cities than the preponderance of the
10 evidence standard provided for under existing law. . . Local comprehensive
11 plans and development regulations require counties and cities to balance
12 priorities and options for action in full consideration of local circumstances.
13 The legislature finds that while this chapter requires local planning to take
14 place within a framework of state goals and requirements, the ultimate burden
15 and responsibility for planning, harmonizing the planning goals of this chapter,
and implementing a county's or city's future rests with that community.⁵

16 In this matter, the Petitioner bears the burden to establish the County's compliance action
17 is clearly erroneous.

18 19 **II. DISCUSSION**

20 **Issue to be Decided**

21 Whether Pacific County's action in response to the Board's Final Decision and Order (FDO)
22 appropriately addresses the violations of RCW 36.70A.110 and RCW 36.70A.130 in regards
23 to the size of its Urban Growth Areas?

24 In its FDO issued on June 22, 2011, the Board first concluded it had jurisdiction over
25 Petitioner's Urban Growth Area (UGA) sizing challenge. Thereafter the Board found, based
26 on the Record before it, that the County's adoption of Resolution No. 2010-036 was clearly
27 erroneous in its sizing of the UGAs for the cities of Ilwaco, Long Beach, Raymond, and
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32 ³ RCW 36.70A.320(1), (2) and (3)

⁴ *Department of Ecology v. PUD1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993)

⁵ RCW 36.70A.3201, in part

1 South Bend, as well as unincorporated Seaview, in violation of RCW 36.70A.110 and RCW
2 36.70A.130.

3
4 During the compliance period the County worked with the four incorporated cities to
5 complete buildable lands analyses. The work done by the various governmental entities
6 culminated with the adoption of Resolution 2012-022 on May 22, 2012. The Resolution set
7 the Urban Growth boundaries at the present municipal boundaries of each of the cities and
8 the pre-2010 Seaview UGA boundaries.
9

10 Futurewise agrees the County has achieved compliance in regards to UGA sizing and so
11 states in its response.⁶
12

13 III. ORDER

14 Based on the foregoing, the Board determines Pacific County Resolution 2012-022 has
15 addressed the findings of noncompliance in the Board's June 22, 2011 Final Decision and
16 Order. The case is CLOSED.
17

18
19 Dated this 8th day of August, 2012
20

21 _____
William Roehl, Board Member

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23 _____
24 Nina Carter, Board Member

25 **Note: This is a final decision and order of the Growth Management Hearings Board**
26 **issued pursuant to RCW 36.70A.300.⁷**
27 _____

28 ⁶ Futurewise went further in its response to thank "Pacific County's Board of County Commissioners, the
29 Prosecuting Attorney, the Planning Commission, the Planning Staff, the cities and their staff, and county
30 residents for their professional, thoughtful, and timely work on this important issue."

31 ⁷ Should a party choose to do so, a motion for reconsideration must be filed with the Board and served on all
32 parties within ten days of mailing of the final order. WAC 242-3-830(1), WAC 242-3-840.

A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty
days as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970.
It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth
Management Hearings Board is not authorized to provide legal advice.